

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

IN RE: DIGITEK PRODUCTS LIABILITY LITIGATION MDL NO. 1968
2:08-md-01968 (JRG)

THIS DOCUMENT RELATES TO ALL CASES

**APPLICATION OF SHAMUS B. MULDERIG FOR APPOINTMENT TO THE
PLAINTIFFS' STEERING COMMITTEE IN PLACE OF G. ERICK ROSEMOND**

On or about November 5, 2008, by Pretrial Order #4 attached hereto as Exhibit 1, this Court appointed G. Erick Rosemond, Esq., Managing Attorney of the Pharmaceutical and Medical Device practice of Hissey Kientz, LLP ("Hissey Kientz") to the Digitek Plaintiffs' Steering Committee ("PSC") in the above-captioned multi-district litigation. In anticipation of Mr. Rosemond's appointment to the PSC, several Hissey Kientz pharmaceutical attorneys, including and in particular Shamus B. Mulderig, Esq. "geared up" for heavy participation in Digitek litigation by, *inter alia*, actively participating with the intake of hundreds of potential cases, reviewing thousands of pages of medical records, consulting with health care professionals, reaching out and brainstorming with several current members of the PSC, and attending Digitek litigation seminars and conferences.

Shortly after his appointment to the PSC, G. Erick Rosemond, Esq. left Hissey Kientz and joined another law firm that is not involved in Digitek litigation. Shamus B. Mulderig, Esq. replaced Mr. Rosemond as Managing Attorney of Hissey Kientz Pharmaceutical and Medical Device practice including the firm's voluminous Digitek docket. As Hissey Kientz had already made a firm-wide commitment to participate in and devote its time and resources to the Digitek PSC, Mr. Mulderig naturally and

immediately made the firm's Digitek docket his top priority. To date, Hissey Kientz has filed fourteen (14) Digitek cases and anticipates filing more cases in the near future.

Pursuant to Pretrial Order #4, the appointment of the PSC is of a personal nature and members cannot be substituted by other attorneys, including members of the appointee's law firm *except with prior approval of the court*. Shamus B. Mulderig, Esq. hereby seeks said approval and respectfully requests that this Court substitute him in place of G. Erick Rosemond, Esq. on the PSC. Mr. Rosemond has been notified of the proposed substitution and has executed a consent to said substitution, which is attached hereto as Exhibit 2.

According to Pretrial Order #2, attached hereto as Exhibit 3, the main criteria for PSC membership are (a) willingness and availability to commit to a time-consuming project; (b) ability to work cooperatively with others; and (c) professional experience in this type of litigation. Mr. Mulderig meets the Court's listed criteria, has already demonstrated his dedication to the PSC by his involvement to date, and wholeheartedly commits to future PSC obligations as follows:

As Hissey Kientz has been actively involved in the *Kugel Hernia Mesh*, *Ortho-Evra*, *ReNu with Moistureloc*, *AMO-Complete Moisture Plus*, *Vioxx*, *Seroquel*, *Zyprexa*, *Guidant*, and *Celebrex/Bextra* complex and multi-district litigations, Mr. Mulderig is well-aware that complex litigation is highly demanding, requiring time, dedication and attention. To that end, Mr. Mulderig is willing and able to commit not only his own time but that of his staff of five (5) pharmaceutical attorneys and two licensed nurses to the needs of the PSC in all matters arising during discovery and trial.

Mr. Mulderig and the attorneys he manages have demonstrated their cooperativeness and ability to work with others during the firm's participation in the Ortho-Evra California Plaintiffs' Steering Committee, AMO Complete Moisture Plus Plaintiffs' Steering Committee, and the Hormone Replacement Therapy Plaintiffs' Steering Committee, as well as actively participating in American Association for Justice litigation groups for all of the above-referenced dockets. In fact, Mr. Mulderig and the attorneys at Hissey Kientz have worked well in the past with several of the attorneys already sitting on the Digitek PSC. Mr. Mulderig further hereby commits to offer assistance and work cooperatively with others in the Digitek PSC to efficiently and effectively move all issues forward to resolution.

Mr. Mulderig has extensive experience representing both plaintiffs and defendants in complex litigation, is licensed in Texas, New York and Arkansas and currently manages the Pharmaceutical and Medical Device practice at Hissey Kientz. As earlier stated, Hissey Kientz's practice involves many active multi-district litigations including *Kugel Hernia Mesh*, *Ortho-Evra*, *ReNu with Moistureloc*, *AMO*, *Vioxx*, *Seroquel*, *Zyprexa*, *Guidant*, and *Celebrex/Bextra*. He has conducted hundreds of depositions and tried numerous personal injury cases to verdict. Mr. Mulderig and his supporting attorneys at Hissey Kientz seek to use their collective professional experience to assist the PSC in leading this litigation forward.

WHEREFORE, for all the forgoing reasons, the undersigned respectfully requests that this Court appoint Shamus B. Mulderig, Esq. to the Plaintiffs' Steering Committee in place of G. Erick Rosemond, Esq.



Shamus B. Mulderig, Esq.

Hissey* Kientz, LLP

9442 Capital of Texas Highway N., Suite 400


Austin, Texas 78759

Telephone: 512-320-9100

Fax: 512-320-9101

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2009, a copy of the foregoing Application of Shamus B. Mulderig for Appointment to the Plaintiffs' Steering Committee in Place of G. Erick Rosemond was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.



Shamus B. Mulderig, Esq.
Hissey* Kientz, LLP
9442 Capital of Texas Highway N., Suite 400
Austin, Texas 78759
Telephone: 512-320-9100
Fax: 512-320-9101
smulderig@hklp.com